SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME **JUDGE**	**September 6, 2019, 10:00 a.m.** **HON. LAURIE M. EARL**	**DEPT. NO** **CLERK**	**25** **D. BEAROR**
THAO VO, **Petitioner,** **v.** **CITY OF SACRAMENTO, et al.,** **Respondents.**		**Case No.: 34-2019-80003139**	
Nature of Proceedings:	**PETITION FOR WRIT OF MADNATE**		

Following is the Court's tentative ruling granting the petition for writ of mandate.

INTRODUCTION

Petitioner Thao Vo is a landlord who owns a rental property in Sacramento. It appears undisputed that one of her tenants was using the property to illegally cultivate large amounts of cannabis, in violation of the Sacramento City Code. As a result, Respondent City of Sacramento has imposed a $269,000 administrative penalty Vo. Vo – who claims she had no knowledge of her tenant's actions – now challenges the penalty by petition for writ of mandate. For the reasons stated below, the petition is granted.

THE RELEVANT LAW

Section 8.132.040 of the Sacramento City Code provides that no more than six cannabis plants may be cultivated in or on the grounds of a private residence.[1] The penalty for violating this provision is $500 per plant over the six plant limit. (§ 8.132.050.)[2] The City Code also

[1] This is in line with state law, which provides it shall be lawful to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plans. (Hlth & Saf. Code § 11362.1, subd. (a)(3).)

[2] Unless otherwise noted, undesignated statutory references are generally to the City Code.

provides "[n]o person shall own, lease, occupy, or have charge or possession of any property upon which cannabis is knowingly *or unknowingly* being cultivated" in violation of the Code. (§ 8.132.030, emphasis added.) In other words, under the City Code, a landlord (i.e., a property owner) can be held liable if a tenant is cultivating more than six cannabis plants, even if the landlord does not know the tenant is doing so. (See also § 8.08.050 [every real property owner "is required to manage the property in a manner so as not to violate the provisions of this code and the owner remains liable for violations thereof regardless of any contract or agreement with any third party regarding the property."].)

Although not directly relevant to this case, the Court notes the City has established a rental housing inspection program in order to "prevent blight and ensure that all persons who live in rental housing units are provided decent, safe and sanitary housing."[3] (§ 8.120.020.) Landlords are required to register all rental properties with the City, and the City periodically inspects those properties to ensure they comply with minimum standards. (§ 8.120.060.) The program is funded by annual fees imposed on each rental unit and by inspection fees imposed each time a particular unit is inspected. (§ 8.120.050.) Any person who violates a provision of the program is subject to administrative penalties pursuant to Chapter 1.28 of the City Code. (§ 8.120.200.) Those penalties range from $100 to $25,000, depending on the nature of the violation. (§ 1.28.010(D)(3).) It appears unlikely that the penalty for failing to register a rental unit with the City would exceed $2,499.99.[4] (*Id*.)

FACTUAL AND PROCEDURAL BACKGROUND

The Court's decision in this case turns largely on the evidence. The Court thus discusses it in some detail.

In 2008, Vo purchased property located at 7636 Tierra Wood Way, in Sacramento ("the property"). She has used the property as a rental since she purchased it.

On March 27, 2018, Vo signed a rental agreement with a new tenant named Rong Ai Li.[5]

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[3] It is not directly relevant because Vo has not been charged with failing to comply with the program (or if she has, that charge is not at issue here). The Court describes the program only because it is relevant to some of the challenged findings in this case.

[4] The penalty for violations that are likely to cause or do cause harm to public or private property is $1,000 to $2499.99; the penalty for lesser violations is $100 to $999.99.

[5] Rong Ai Li's named is typed in the rental agreement. A second tenant – Dan Li – is

(Unless otherwise indicated, all subsequent dates are in 2018.) The lease began on April 1. Under the terms of the rental agreement, Li was responsible for paying for utilities. Li also agreed not to make any alterations to the premises without Vo's permission, and agreed not to "violate any law, nor commit or permit waste or nuisance in or about the premises." (Administrative Record ["AR"] 10-13.) The agreement did not specifically prohibit the cultivation of cannabis.[6]

On May 31, a neighbor complained to the Sacramento Police Department that the property's garage door was open. The officer who responded to the property that same day concluded it was being used as a residential marijuana grow house because there were grow lights in the garage in plain view and the doors from the garage to the residence and the back yard had been fortified "in a manner that is common in residential marijuana grows." (AR 35.) It appears no action was taken. It is not clear why. There is no evidence that Vo was notified.

In August, the Police Department received information regarding possible illegal cannabis cultivation at the property – namely, unusually high SMUD bills. It initiated an investigation as a result.[7] According to an affidavit in support of a search warrant, the Police Department "periodically receives lists of residences using unusually high amounts of power from [SMUD]" because "indoor marijuana grows utilize an inordinate amount of electric power in relation to the regular usage of structures around them." (AR 34.) SMUD records listed Rong Ai Li as the subscriber since March 27 (i.e., the date the rental agreement was signed). Based on the amount of power being used, the Police Department concluded that marijuana grow lights were being run on two separate 12 hour cycles from May 25 through July 24.

On August 14, an officer drove by the property and noted "a black, metal security cage surrounding the front door to the residence," "external bars on all of the visible windows," and "two surveillance cameras" near the garage and facing towards the entrance.[8] (AR 35.) The

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handwritten in. (AR 10.)

[6] Starting January 1, 2019, a landlord may be able to avoid administrative penalties like the one issued in this case if the rental agreement prohibits the cultivation of cannabis. (Gov. Code § 53069.4, subd. (a)(2)(C).)

[7] There is no suggestion the investigation was prompted by the officer's May 31 visit to the property.

[8] Li testified the bars were there when she purchased the property. (Tr. 30.) There is no evidence to the contrary.

officer ran a license check on a vehicle parked in front of the property; it was registered to one Shu Fei Li. Records checks revealed Shu Fei Li had recently been arrested for indoor marijuana cultivation, and was currently on probation. When Shu Fei Li he was arrested, officers found a handgun registered to Rong Ai Li; Shu Fei Li stated the gun was purchased for him by his son. Another records check revealed Rong Ai Li had a rifle registered to him. (AR 36.)

On August 23, 2018, the Police Department executed a search warrant at the property and found 544 cannabis plants. They also took pictures, which are worth the proverbial thousand words. Among other things, the pictures show several rooms crammed wall to wall with cannabis plants. (See, e.g., AR 72, 74.) Vo does not seriously dispute that large amounts of cannabis plants were being grown inside the house.

For reasons that are not known, no criminal charges were ever filed against Rong Ai Li. Instead, the Police Department treated this as an "admin. penalty case only." (AR 24; see also AR 25["Case will not be forwarded to DA."], AR 26 ["Admin only at this point . . . no warrants/ arrests."].)

The Police Department assessed Vo with a $269,000 administrative penalty for violating the City Code provision prohibiting anyone from cultivating more than six cannabis plants.[9] Vo states she first learned the property was being used for illegal indoor cannabis cultivation when she received notice of the penalty. (See Vo Decl. ¶ 5, filed 5/6/19.) As discussed below, there is no evidence to the contrary.

Vo appealed the penalty, and a hearing was held before a hearing examiner appointed by the Sacramento City Council.

Officer Trevor Schwertfeger was one of the officers who executed the search warrant at the property. According to the hearing transcript, he was "in attendance" at the hearing. (AR 173.) He was asked no question. Although not clear, it appears he may have simply read a previously prepared statement into the record.[10] (Compare Hearing Transcript ["Tr'."] 6-11, with AR 130-31.) He also described the photos that were taken when the property was searched.

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[9] The penalty was $500 per plant over the six plant limit (i.e., 544 – 6 = 538 x $500 = $269,000). Although not directly relevant to this ruling, the Court notes that Vo presented evidence that suggests the property is currently worth around $280,000 – which is only slightly more than the $269,000 penalty imposed. Vo is thus not being entirely hyperbolic when she argues the City has effectively seized her property because her tenant was using it to illegally cultivate cannabis.

[10] The City may wish to clarify this at the hearing.

(Tr. 11-14.) The City called no other witnesses, and it is not clear what documentary evidence it introduced at the hearing or provided to the hearing examiner.[11]

Vo does not speak English and she testified through a translator. After her counsel gave the equivalent of an opening statement, the hearing examiner asked whether Vo had anything she wanted to say. At this point, the hearing transcript notes, "Inaudible due to sound quality." (Tr. 17.) The Court thus does not know what – if anything – Vo wanted to say about this case.

The hearing examiner and the City Attorney then asked Vo a series of questions that elicited the following testimony:

- Vo does not utilize a property manager.
- She found the current tenant, Rong Li, when he called in response to a rental sign in front of the property.
- She did not know Li prior to renting the property to him.
- Li stated he had family in the area and thus wanted to rent in the area.
- Vo does not know Li's current whereabouts and has been trying to locate him.
- Rent was usually collected in cash at the property itself, either by Vo, her son, or someone else who would help her out.[12] Vo also testified she would usually call before she went to pick up the rent, and the tenant would "open the door, give her the check, and then that's it."

(Tr. 17-18, 21, 34.)

In response the City Attorney's self-described "statements," Vo testified she was not aware of the City's rental housing inspection program, and she had not registered the property with the program. (Tr. 19-21.) She also testified she had four other rental properties, and that none of them have had any cannabis-related issues. (Tr. 22.) The City Attorney asked whether Vo's son was "in any way engaged in cannabis-related work." She responded, "No." (Tr. 29-30.)

Vo testified she has had two tenants at the property since 2015: Rong Li and one prior

[11] The administrative record contains 22 exhibits lettered A through V. (AR 14-15.) It is not known whether these exhibits were provided to the hearing examiner and Vo, when they were provided, whether they were authenticated, and by whom. The City may wish to clarify this at the hearing.

[12] Vo explained that because she does not drive, sometimes her son would drive her to the property to collect rent, and sometimes her son would go collect rent for her. (Tr. 29.)

tenant who rented the property from approximately January 2015 through March 2018.[13] (Tr. p. 22-23.) She testified that her practice was to inspect the property when she prepared it to be rented, but that she would not do an official "walkthrough" with the tenant the day they moved in. (Tr. 24.) The City Attorney asked Vo whether she inspected the property in 2015, 2016, and 2017 (i.e., before Li moved in), how often she collected rent, and whether she noticed anything strange, "any odors, any alterations, anything, anything strange with the property" during that time period. She testified she generally inspected the property once a year,[14] that she did not remember how often she collected rent, and that did not notice anything strange at the property. (Tr. 30-31.) Vo also testified that her practice when a tenant moved out was to do something like a move-out inspection to determine whether anything needed to be deducted from the security deposit. (Tr. 32-33.) When the prior tenant moved out of the property, Vo testified there wasn't any major damage, and all she had to do was clean the house. (Tr. 33.)

The City Attorney asked Vo about a picture – but the picture is not identified so the Court cannot be sure what picture Vo was asked about. (Tr. 34.) It appears, however, that she was asked about a picture taken from what appears to be the front door of the property; inside the door there is an object that appears to be a large garbage can with wires or hoses hanging out of it.[15] She testified she did not recall specifically seeing the trash can in the picture, but that she may have seen a small trash can, "but she just assumed it's just like a regular trash can, but she didn't see any of the other details. . . . So she say she didn't see specifically this trash can. She

[13] Vo testified the prior tenant's name was "Chiang Yang or Ziang or something. She said it's hard for her to say the name." (Tr. 23.) The City Attorney then stated, "let the record reflect that the SMUD records that we've provided do show Jiang Chiang Yang was one of the account holders as well." (Tr. 23.) SMUD records actually show a "Jiang Jin Yan" (or possibly Jin Yan Jiang) on the account from December 12, 2014, through November 13, 2015. (AR 66.)

[14] According to Vo's translator, "She said around like every year she go and inspect the house to see if there's any damages or anything." (Tr. 26.) And again, "every estimate around a year when she come and do an inspection." (Tr. 31.) No questions were asked about what form this annual inspection took. Vo described it as a "walk around" and stated she "didn't much or anything. It's just like majorly the house may be dirty or like some of the paint might be scraped or something." (Tr. 32.) It is not clear Vo ever went inside the house (as opposed to just visually inspecting it from the outside), and, indeed, as noted below, a landlord cannot enter a rental unit to inspect it without the consent of the tenant. (Civ. Code § 1954.)

[15] Officer Schwertfeger testified there were "fluids" in the trash can and it had "pumps running in it for the marijuana plants." (Tr. p. 12.) Presumably this was used to water and/or fertilize the plants.

just say like just a small, regular kind of trash can potentially she see, you know, when they open the door and giving her the rent." (Tr. 35.) When asked whether she thought it was strange to keep a trash can in the living room, she answered "she didn't really . . . think about it because she just figures . . . everybody has their own choice of how they live in their place." (*Id*.)

The City Attorney then showed Vo a series of photos the police took when they executed the search warrant. Because the City Attorney did not identify the pictures for the record, it is difficult to tell what pictures Vo was looking at when she answered particular questions. She testified, however, that she did not see what was depicted in the pictures when she went to collect the rent or when she did a move-in/move-out inspection. (Tr. 36-37.)

During the hearing, the City Attorney stated that "this tenant [presumably Rong Li] is also the subject of another property grow that [will] be coming up for hearing," and is "from New York. We have an issue with organized crime and New York people here, and so I think [Vo] was extremely negligent in how she . . . managed her property, at worse she was involved or willfully blind[.]" (Tr. 40-41.) He also stated, "we've had other people testify here in other hearings that somebody approached them offer them – I forgot – 75,000 to let them use their property as a cannabis grow." (Tr. 43.) The Court hopes it goes without saying that there is absolutely no evidence in this case that Vo is involved with organized crime from New York, or that anyone paid Vo $75,000 (or any other amount) to use the property as a cannabis grow house.

Although perhaps not *directly* relevant, the Court also feels compelled to note that, during the hearing, the City Attorney stated to Vo, "I believe under . . . California law, property owners are supposed to at least inspect the property once a year to like change the carbon monoxide protector." (Tr. 26.) This is simply incorrect. California law requires property owners to "install" carbon monoxide devices in all "dwelling units intended for human occupancy." (Hlth & Saf. Code § 17926, subd. (a).) Landlords must ensure such devices are "operable" when a tenant takes possession, and thereafter the "tenant shall be responsible for notifying the owner . . . if the tenant becomes aware of an inoperable or deficient . . . device within his or her unit." (Hlth & Saf. Code § 17926.1, subd. (c).) A landlord "may" enter a rented dwelling unit "for the purpose of installing, repairing, testing, and maintaining carbon monoxide devices required by this section, pursuant to the authority and requirements of Section 1954 of the Civil Code." (Hlth & Saf. Code § 17926.1, subd. (b).) As discussed below, section 1954 strictly limits when a landlord can enter rented property, and imposes notice requirements for doing so.

Thus, contrary to the City Attorney's belief, a landlord is *not* required to inspect property once a year to change a carbon monoxide device. Instead, a landlord is *permitted* to enter property to install or repair a carbon monoxide device, with proper advance notice to the tenant. (Civ. Code § 1954.)

Following the hearing, the hearing examiner issued a decision upholding the penalty in full based on the following findings:

- "The Administrative Penalty was properly issued and served."
- "SMUD records show accounts for four different names since 2015 and the high readings are consistent with cannabis cultivation."
- Vo "made inconsistent statements regarding how many tenants she had since 2015."
- Vo "did not adequately inspect the property if she did not enter the property when she went there to collect rent."
- "If [Vo] had inspected the property in April of 2018, she would have been the internal fortifications over the windows and the electrical wiring installed by the prior tenants. Her claim that nothing looked strange when she conducted the move-out inspection is not believable."
- Vo "has four other rental properties but none have been registered with the City as rentals, so they have not been subject to an annual City inspection. If her property had been registered, the prior tenant's use for cannabis cultivation would have been discovered."
- Vo "knew or should have known about the illegal cannabis cultivation and the alteration of her property for such purposes because either (i) she did not properly manage her property, and (ii) she relied on her son to collect the rent as her agent and he initially allowed or approved of such use."

This petition followed.

STANDARD OF REVIEW

The parties disagree on the standard of review.

This petition is brought under Code of Civil Procedure section 1094.5, which applies when someone challenges a decision "made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal . . . ." (Code Civ. Proc. § 1094.5, subd. (a).) Here, the City Code entitled Vo to a hearing to contest the administrative penalty.

The inquiry in a case brought under section 1094.5 is whether there was a fair trial or any prejudicial abuse of discretion. (Code Civ. Proc. § 1094.5, subd. (b).) "Abuse of discretion is

established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc. § 1094.5, subd. (b).) In determining whether the findings are supported by the evidence, the court applies one of two tests: (1) the independent judgment test, or (2) the substantial evidence test. (Code Civ. Proc. § 1094.5, subd. (c); *Nathan G. v. Clovis Unified School Dist*. (2014) 224 Cal.App.4th 1393, 1403.) The dispute between the parties is over which test applies in this case. The Court notes, however, that regardless of which test applies to its review of the findings, questions of law – including whether Vo received a fair trial and/or whether the City failed to proceed in the manner required by law – are subject to the Court's independent review. (*Donaldson v. Department of Real Estate* (2005) 134 Cal. App. 4th 948, 954.)

Which test applies depends on whether the challenged decision "affects a fundamental vested right." (*Amerco Real Estate Co. v. City of West Sacramento* (2013) 224 Cal.App.4th 778, 782-83.) If it does, then the independent judgment test applies; if it does not, then the substantial evidence test applies. (*Id*.) Under the independent judgment test, "the trial court must weigh the evidence and determine whether the administrative findings are supported by the weight of the evidence." (*Id*. at 783.) Under the substantial evidence test, "the trial court considers only whether the administrative findings are supported by substantial evidence in light of the whole record." (*Id*.) The independent judgment test is thus less deferential to the administrative findings, while the substantial evidence test is more deferential. (See *In re Prather* (2010) 50 Cal.4th 238, 259-60.) Not surprisingly, Vo argues the Court should apply the independent judgment test, while the City argues it should apply the substantial evidence test. Whichever test applies, the Court "must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817.)

Determining whether a decision affects a fundamental vested right is done "on a case-by-case basis." (*Amerco Real Estate, supra*, 224 Cal.App.4th at 783.) "A right may be deemed fundamental on either or both of two bases: (1) the character and quality of its economic aspect; [or] (2) the character and quality of its human aspect." (*Ogundare v. Department of Industrial Relations* (2013) 214 Cal.App.4th 822, 828 [internal quotes omitted]; see also *Bixby v. Pierno*

(1971) 4 Cal.3d 130, 144.) "Although no exact formula exists by which to make this determination [citation] courts are less sensitive to the preservation of purely economic interests. [Citation.] In deciding whether a right is 'fundamental' and 'vested,' the issue in each case is whether the affected right is deemed to be of sufficient significance to preclude its extinction or abridgment by a body lacking judicial power." (*Amerco Real Estate*, supra, 224 Cal.App.4th at 783.)

Vo argues the decision in this case affects her fundamental and vested constitutional rights, but she cites no case law supporting this statement and provides no analysis of the issue.

The City cites cases holding that decisions in the area of land use regulation do not involve fundamental vested rights. (See, e.g., *City of Walnut Creek v. County of Contra Costa* (1980) 101 Cal.App.3d 1012, 1016 [substantial evidence test applied in case challenging decision to issue building permit]; *City of Carmel-By-The Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84, 91 [substantial evidence test applied in case challenging decision to issue use permit to build motel].) This is true – but the Court is not necessarily convinced this case is properly analyzed as a land use case. The cases cited by the City all involved challenges to decisions regarding the issuance of a zoning variance or a building permit. That is not the case here. Moreover, our Supreme Court has left open the possibility that at least *some* cases involving zoning variances may implicate fundamental vested rights. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 512, fn.8 ["We note by way of caution, however, that merely because a case is said to involve a 'variance' does not necessarily dictate a conclusion that no fundamental vested right is involved."].)

The Court's independent research has found no cases directly on point. Although this is an interesting issue, the Court ultimately concludes it need not determine whether this case affects a fundamental vested right, because even if it assumes it does not, and that the substantial evidence test thus applies, it finds most of the hearing examiner's findings in this case are not supported by substantial evidence.

ANALYSIS

Vo makes numerous arguments in support of her petition. The Court finds two are persuasive and provide a sufficient basis for granting the petition. It thus does not discuss the remaining arguments.

1. Due Process

Vo argues she was denied due process because – for want of a better description – she was charged with violating the wrong provision of the City Code. As Vo accurately notes, the notice she received from the City charged her with violating sections 8.132.040 and 8.132.050 of the City Code – the notice does not cite section 8.132.030. (AR 1.) Moreover, the hearing examiner's decision states the penalty was issued for violating section 8.132.040; like the notice, the decision does not cite section 8.132.030. (AR 225, 226.)

Section 8.132.040 provides "[n]o person shall cultivate cannabis within a private residence" unless done in accordance with this section, and further provides "no more than six living cannabis plants may be cultivated within the private residence[.]" Section 8.132.050 sets the amount of the penalty for violation of this provision at $500 per plant in excess of six. Vo contends *she* did not violate section 8.132.040, because *she* was not cultivating cannabis at the property – her tenant was. It does not appear that the City suggests otherwise.

Section 8.132.030 of the City Code provides that "[n]o person shall own, lease, occupy, or have charge or possession of any property upon which cannabis is knowingly or unknowingly being cultivated," except in compliance with the City's cannabis ordinance. Section 8.132.030 is thus the City Code provision that makes a landlord liable if a tenant is cultivating more than six cannabis plants in a rental property. According to Vo, because she was not cultivating cannabis at the property, this is the only code section she could potentially be penalized for violating. The City appears to agree, because in its opposition brief, it argues Vo violated section 8.132.030. (See Opp. at 6:27-7:1; 13:12-15.) But, as just noted, she was not given notice she was being charged with violating section 8.132.030.

The "essence" of due process is "*notice* and an opportunity to respond." (*Thornbrough v. Western Placer Unified School Dist.* (2013) 223 Cal.App.4th 169, 183, emphasis added.) The purpose of notice "is to apprise the affected individual of, and permit adequate preparation for, an impending hearing." (*Id*. at 183-84, internal quotes omitted.) Vo's claim – in a nutshell – is that the only notice she was provided stated she was being penalized for violating section 8.132.040 of the City Code, which prohibits any person from cultivating over six cannabis plants. Because she was not cultivating cannabis plants at the property, she conducted her

defense accordingly.[16]

The City never addresses this argument – other than to state it was not raised at the administrative hearing. (See *Niles Freeman Equipment v. Joseph* (2008) 161 Cal.App.4th 765, 787 [noting general rule "that issues not presented at an administrative hearing cannot be raised on review."].) The Court finds Vo's failure to raise this issue at the hearing is excusable because (1) the notice of administrative penalty did not cite section 8.132.030, and (2) section 8.132.030 was not mentioned at the administrative hearing or in the hearing examiner's decision. Indeed, the City only made its theory in this case clear when it cited that section in its opposition brief.[17] The City cannot be heard to complain that Vo did not raise this issue at the administrative hearing when the City never notified her she was being charged with violating section 8.132.030.

Particularly in the absence of any argument from the City on this issue, the Court finds Vo's due process rights were violated because the City cited the wrong Code provision in the notice of administrative penalty and did not cite the correct provision until this action was filed. (See *People v. Hernandez* (1976) 64 Cal.App.3d Supp. 16 22 ["Appellants having been charged under the wrong statute, they did not receive the requisite notice which due process requires and this fundamental error compels reversal."].)

2. The Challenged Findings

Vo challenges *all* of the hearing examiner's findings of fact, arguing they are not supported by the evidence or the law, or are irrelevant. The Court agrees.

The Court has already discussed the hearing examiner's finding that the administrative penalty was "properly issued and served." Although it might have been properly served, it did not provide Vo with notice of the Code provision she was being charged with violating.

The hearing examiner also found "SMUD records show accounts for four different names since 2015 and the high readings are consistent with cannabis cultivation." Vo does not challenge this finding per se, but she does note that the SMUD account was never in her name, and that she thus had no notice of the high meter readings. This appears to be true – indeed, the

[16] It is easy to see how a person charged with illegally cultivating cannabis would conduct their defense much differently than a person charged with being a negligent landlord.

[17] The City also cited section 8.132.030 – but not 8.132.040 – in its opposition to Vo's application for a stay. (MPA in Opp. to App. for Stay at 4:18.)

City never mentions this finding or suggests that Vo received copies of the SMUD records or otherwise had notice of the high meter readings. It is thus not clear how this finding is relevant to the issues in this case.

The hearing examiner also found Vo "made inconsistent statements regarding how many tenants she had since 2015." Vo argues the evidence does not support this findings. The Court agrees. The only statement the Court can find regarding the number of tenants is as follows:

> Q: And how many tenants have you had at this property since 2015?
>
> A: She said at 2015 there's only one tenant that renting out that place before this one.
>
> Q: She's only had Mr. Huang A. Li [actually Rong Ai Li], and one other tenant since 2015?
>
> A: Yes.

(Tr. 22-23.) Perhaps the Court missed an inconsistent statement. If so, the City may wish to point that out at the hearing. If not, the finding that Vo made inconsistent statements regarding how many tenants she had since 2015 is not supported by the evidence.

The hearing examiner found Vo took rental payments in cash. Again, Vo does not challenge this finding per se. She notes only that no law prohibits accepting rental payments in cash, and that accepting rental payments in cash does not demonstrate she was involved in the illegal cultivation of cannabis. The Court tends to agree – particularly in the absence of any argument from the City on this issue. Perhaps the City believes paying the rent in cash is inherently suspicious. If so, it proffered no evidence to corroborate that suspicion, or to demonstrate that Vo should have been suspicious when Rong Li paid the rent in cash. Moreover, and as discussed in more detail below, suspicion does not constitute substantial evidence.

The hearing examiner found "[Vo] did not adequately inspect the property if she did not enter the property when she went there to collect rent." Civil Code section 1954, however, provides a landlord may enter a rental property "only" in the following circumstances: (1) in case of emergency; (2) to make repairs, alterations or improvements, to show the property to prospective purchasers or tenants, or to perform a move out inspection at the end of the lease; (3) when the tenant has abandoned or surrendered the premises; (4) pursuant to court order; or (5) to install, repair, or read a water meter or investigate or fix a condition causing abnormally high

water usage.[18] (Civ. Code § 1954; see also Civ. Code §§ 1950.5(f), 1954.211.) Section 1954 thus "limits a landlord's right to enter an occupied residential building." (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1049.) As relevant here, a landlord may enter a unit to inspect it *only* at the end of the lease, and even then, only at the request of the tenant. (See *Rental Housing Owners Assn. of Southern Alameda County, Inc. v. City of Hayward* (2011) 200 Cal.App.4th 81, 86.) Thus, unless the tenant had invited Vo in, she would have been violating the law if she had entered the property to inspect it when she went there to collect rent. The hearing examiner's conclusion that Vo "did not adequately inspect the property if she did not enter the property when she went there to collect rent" is thus contrary to law.

The hearing examiner found, "If [Vo] had inspected the property in April 2018 [i.e., when Rong Ai Li moved in], she would have seen the internal fortification over the windows and the electrical wiring *installed by the prior tenants*. Her claim that nothing looked strange *when she conducted the move-out inspection* [i.e., after the prior tenants moved out] is not believable." (Emphasis added.) Vo argues this finding is not supported by the evidence. The Court agrees – because there is absolutely *no* evidence in the record that suggests *the prior tenants* installed fortifications over the windows or altered the electrical wiring. Indeed, other than Vo's testimony that the house was "dirty," there is *no evidence* in the record regarding the condition of the property when the prior tenants moved out. (Tr. 33.)

The hearing examiner found none of Vo's rental properties were registered with the City's rental housing inspection program – a fact which Vo admits. The Court notes, however, that this finding appears to be irrelevant because Vo is not being charged with violating the City's rental housing inspection program. The hearing examiner then found that if the property in question had been registered with the program, it would have been subject to "an annual City inspection" and "the prior tenant's use for cannabis cultivation would have been discovered." Vo argues this finding is based on sheer speculation. The Court agrees, for several reasons. First, registered rental units are not subject to an annual inspection; they are subject to "routine periodic inspection." (City Code § 8.120.080(A).) It is thus impossible to know *when* the

[18] Effective January 1, 2019, a landlord may also enter a rental property to comply with new requirements regarding inspection of "exterior elevated elements" like decks and balconies. (Civ. Code 1954, subd. (a)(6).)

property would have been inspected, or even whether it would have been inspected between 2015 and 2018. Second, and more importantly, if such an inspection had occurred, it is impossible to know what it would have uncovered because the City is required to mail notice of an inspection to the tenant at least 14 days in advance. (City Code § 8.120.090.) Assuming Vo's prior tenants were indeed growing large amounts of cannabis in the property, 14 days would have been enough time for them to remove all evidence thereof. Simply put, there is no way of knowing whether registering the property with the rental housing inspection program would have led to the discovery that the prior tenant was using the property for cannabis cultivation. Moreover, and perhaps more importantly, Vo is not being fined because her prior tenants were cultivating more than six cannabis plants in the property. Instead, she is being fined because police found 544 cannabis plants at the property on August 28, 2018, when it was being rented by Rong Li. The hearing examiner's finding that the prior tenant's use of the property for cannabis cultivation would have been discovered had Vo registered the property with the City's rental housing inspection program is thus neither supported by the evidence nor particularly relevant to the issues raised by this case.

The hearing examiner found Vo "knew or should have known about the illegal cannabis cultivation and the alteration of her property for such purposes because either (i) she did not properly manage her property, and (ii) she relied on her son to collect the rent as her agent and he intentionally allowed or approved of such use." Vo argues this finding is not supported by the evidence. The Court agrees.

The Court begins with the finding that Vo's son intentionally allowed or approved the illegal cannabis cultivation, because it is the easiest finding to dispose of. The Court has scoured the record for evidence regarding Vo's son, whose name is Huyen Le. The Court has found *no evidence* that even remotely suggests he intentionally allowed or approved of the cannabis cultivation going on at the property. The *only* evidence the Court found regarding Vo's son is that (1) he sometimes helps her pick up rent because Vo can't drive, (2) he works as a handyman, (3) he sometimes does minor repairs at Vo's rental properties, (4) he does *not* manage her properties, and (5) as far as Vo knows, he is *not* engaged in cannabis-related work. (Tr. 21, 27-30.) This evidence does not support a finding that Vo's son knew cannabis was being grown at the property, much less that he "intentionally allowed or approved" of it.

That leaves the hearing examiner's findings that Vo "knew or should have known" about

the illegal cannabis cultivation because she did not properly manage her property. The Court notes first that it finds no evidence in the records that demonstrates Vo had actual knowledge the property was being used for illegal cannabis cultivation, or that she was profiting from her tenant's illegal cultivation of cannabis.[19] That leaves the finding that Vo should have known. The Court finds very little evidence on this issue. In support of this finding, the City cites the Police Department reports, Officer Schwertfeger's testimony and/or statement, portions of a "Housing and Dangerous Building Report" issued by a City building inspector, various City Code provisions, and the hearing examiner's decision. This evidence is sufficient to support a finding that Vo's tenants were using the property for illegal cannabis cultivation; it does not establish that Vo knew or had reason to know that.

At best, the evidence in this case raises a *suspicion* that Vo knew or had reason to know her tenants were using the property to illegally cultivate large amounts of cannabis.[20] But "[s]uspicion is not evidence, it merely raises a possibility, and this is not a sufficient basis for an inference of fact." (*People v. Samuel* (1981) 29 Cal. 3d 489, 505.) This rule applies equally to cases brought under Code of Civil Procedure section 1094.5. (See *Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.* (2018) 23 Cal.App.5th 1129, 1162 ["'Substantial evidence' is not established by just 'any evidence' . . . and is not shown by mere suspicions[.]"; *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633 ["inferences that are the result of mere speculation or conjecture cannot support a finding."]; *Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 830 ["'Substantial evidence' must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with 'any' evidence. It must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case."].) Similarly, merely disbelieving Vo's testimony that she did not know her tenants were illegally cultivating

[19] Beyond receiving $2300 a month in rent – an amount that does not strike the Court as unreasonably high. As noted above, the City Attorney stated at the hearing that "we've had other people testify here *in other hearings* that somebody approached them offer them – I forgot – 75,000 to let them use their property as a cannabis grow." (Tr. 43, emphasis added.) This statement is irrelevant to the issues involved in this case. There is no evidence that Rong Li (or anyone else) paid Vo $75,000 (or any other amount) to use her property as a cannabis grow, and thus no evidence that Vo profited from the illegal cultivation.

[20] The Court emphasizes "*At best*" because it is not convinced the evidence is sufficient to raise such a suspicion.

cannabis is not sufficient to establish that she did. (See, e.g., *People v. Velazquez* (2011) 201 Cal.App.4th 219, 231 [prosecutor cannot meet burden "through mere disbelief of defendant's denial that he committed the crimes."].) The Court thus finds that the hearing examiner's finding that Vo knew or should have known her tenant was illegally cultivating cannabis at the property is not supported by the evidence.

CONCLUSION

The Court appreciates the City's need to shut down illegal cannabis cultivation. It also acknowledges and wholeheartedly agrees with the findings the City made when it enacted the Code provisions at issue:

> [C]annabis grown illegally presents a real and imminent threat to the public health, safety, and welfare. The unregulated cultivation of a large number of cannabis plants on any property substantially increases the chance that violent criminal activity will occur upon the property. Crimes such as home invasion robbery, burglary, assault, and homicide happen substantially more frequently on and around properties where cannabis is being illegally grown. In addition, illegal cannabis cultivation often poses electric and other building code dangers. Cannabis cultivation usually requires elevated electrical consumption that may cause transformers to fail. Unpermitted and substandard construction and electrical work performed to accommodate illegal cannabis cultivation poses a significant fire hazard to neighborhoods. And the hazardous wastes and solvents resulting from illegal cultivation are a threat to the health and safety of nearby residents.

(City Code § 8.132.060(A).) The City is thus to be commended in its efforts to eradicate the illegal cultivation of cannabis.

In this case, however, the City imposed a *substantial* penalty – $269,000 – on a landlord for her tenant's illegal cannabis cultivation, with no evidence the landlord knew or had reason to know about the violation. For the reasons discussed above, the Court finds both that Vo was given insufficient notice of precisely which City Code she was accused of violating, and that the factual findings on which the penalty was based are not supported by the evidence or the law and/or are irrelevant. The petition is thus granted.

* * *

This tentative ruling shall become the Court's final ruling and statement of decision unless a party wishing to be heard so advises the clerk of this department no later than 4:00 p.m.

on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

The Court prefers that any party intending to participate at the hearing be present in court. Any party who wishes to appear by telephone must contact the court clerk by 4:00 p.m. the court day before the hearing. (See Cal. Rule Court, Rule 3.670; Sac. County Superior Court Local Rule 2.04.)

In the event that a hearing is requested, oral argument shall be limited to no more than thirty (30) minutes per side.

If a hearing is requested, any party desiring an official record of the proceeding shall make arrangement for reporting services with the clerk of the department not later than 4:30 p.m. on the day before the hearing. The fee is $30.00 for civil proceedings lasting under one hour, and $239.00 per half day of proceedings lasting more than one hour. (Local Rule 9.06(B) and Gov't. Code § 68086.) Payment is due at the time of the hearing.